BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LORACE M. NEAL Claimant	)	
VS.	)	
MEDICALODGE OF ARK CITY Respondent	)	Docket No. 1,069,589
AND	)	
TRANSPORTATION INSURANCE CO. Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) request review of the July 30, 2014, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones. Joni J. Franklin of Wichita, Kansas, appeared for claimant. James B. Biggs of Topeka, Kansas, appeared for respondent.

The ALJ found claimant's accident arose out of and in the course of her employment with respondent on December 23, 2013. The ALJ ordered respondent to provide a list of two qualified orthopedic physicians of which claimant may choose one. Further, the ALJ ordered all medical expenses paid, including medical mileage and unauthorized medical. The ALJ ordered temporary total disability benefits beginning April 23, 2014, the date claimant was first taken off work by a physician.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the July 29, 2014, Preliminary Hearing and the exhibits, and the transcript of the May 14, 2014, discovery deposition of claimant, together with the pleadings contained in the administrative file.

ISSUES

Respondent argues claimant's accident did not arise out of and in the course of employment, as claimant had completed her business errand and had set out on her own initiative for an activity not related to her work duties. Moreover, respondent alleges

claimant assisted someone who was not in imminent danger, which was neither mandatory nor a requirement of her job duties, and the assistance claimant provided served no business purpose for respondent. Therefore, respondent maintains compensation should be denied.

Claimant contends the courts have held injuries arising out of Good Samaritan acts do not rise to the level of deviation from work duties, abandonment of work duties, or the pursuit of claimant's own pleasure of indulgence, as found in *Rains v. Highland Express Shuttle Service.*[1] Claimant argues the ALJ's Order should be affirmed.

The issue for the Board's review is: Did claimant's injury arise out of and in the course of her employment with respondent?

FINDINGS OF FACT

Respondent is a long-term care and skilled nursing facility. Claimant was employed by respondent as a community relations director. In this position, claimant performed all public relations duties, including assessing clients, planning functions, speaking with the community, and participating in a bimonthly radio show related to health. Claimant agreed she is the "face" of respondent, making public appearances about the services respondent provides. Claimant testified her duties include becoming a familiar source of information for staff and people at medical facilities. She indicated it is important to maintain positive relationships with people because they can promote or disparage respondent in the community.

On December 23, 2013, claimant and a coworker traveled to South Central Kansas Medical Center to perform an assessment on a potential client. Claimant testified South Central Kansas Medical Center is the largest referral source of clients for respondent, and she has done assessments there for the past ten years. Claimant drove her personal vehicle to South Central Kansas Medical Center. She was not provided a company vehicle but instead was compensated for travel time and mileage.

Following the assessment, claimant and her coworker returned to claimant's vehicle in the parking lot of the medical center. Claimant stated she backed her vehicle out of the parking stall to leave, but prior to leaving witnessed a woman standing in the parking lot. Claimant testified:

> As I was backing out and getting ready to head out straight through one of the lanes of traffic the one next to me a woman was standing between these two cars. And I told the young lady in the car with me that she doesn't look right. I rolled down my

[1] *Rains v. Highland Express Shuttle Srv.*, No. 1,023,794, 2005 WL 3665495 (Kan. WCAB Dec. 20, 2005).

> window, I said, are you okay? She said I just fell down. I said, okay, and I put my car in park. And I went over there to make sure that she was okay.[2]

Claimant described the woman as confused and bleeding from the back of her head. Claimant directed her coworker to return to the medical center for help while claimant assisted the woman. Claimant returned to her vehicle, parked approximately eight feet away, to retrieve a blanket and some napkins for the woman. Claimant testified, "As I came back and went across I took my step, I had a hold of another car and my foot went out from underneath me."[3]

Claimant stated she slipped on black ice in the parking lot and landed on her back. Claimant then stood and returned to the woman to wait for medical help. During this time, claimant learned the woman was an employee in the bookkeeping department of South Central Kansas Medical Center. Claimant further testified she was unaware of the woman's employer when she first stopped to help. At the time of the incident, claimant did not think failing to render aid would negatively affect her employment or the ability to do her job. She did state that failing to render aid would negatively affect respondent.

Assisting the injured woman took approximately 10-15 minutes. After the incident, claimant and her coworker returned to their office via claimant's vehicle. Claimant reported the incident to respondent's administrator, Marc Riley. Claimant informed Mr. Riley of her fall but said she was "okay" at the time.[4] Claimant was not reprimanded, nor was her pay docked, for providing help to the woman in the medical center parking lot.

Claimant returned to her regular duties at respondent. Claimant indicated her neck became sore the next day, and approximately two weeks after the incident her pain had spread to her left upper extremity. Claimant's condition worsened, and she eventually sought treatment with her primary care physician, Dr. Yoachim, on March 27, 2014. Dr. Yoachim took claimant off work. Claimant has not worked since March 27, 2014, though she testified she has been on FMLA leave and continues to remain employed by respondent.

PRINCIPLES OF LAW

K.S.A. 2013 Supp. 44-501b states, in part:

> (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within

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[2] P.H. Trans. at 24.

[3] *Id*.

[4] *Id*. at 29.

> the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.
>
> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
>
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2013 Supp. 44-508(h) states:

> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2013 Supp. 44-508(f) states, in part:

> (2)(B) An injury by accident shall be deemed to arise out of employment only if:
>
> > (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
> >
> > (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[5] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[6]

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[5] K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[6] K.S.A. 2013 Supp. 44-555c(j).

ANALYSIS

The sole issue for review is if claimant's Good Samaritan act arises out of and in the course of her employment. As pointed out by both parties, this issue was addressed by a Board Member in *Rains v. Highland Express Shuttle Service.* In *Rains*, the Board Member wrote:

> It is generally held that an activity undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment. Because claimant's actions were intended to help prevent further injury and accidents, his actions supported the duty to provide assistance in emergency situations which provides safer roadways and an environment where assistance is provided in emergency situations. That benefits an employer such as respondent who has employees routinely using the roadways.
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> Moreover, in Larson's Workers' Compensation Law, it is noted that injury incurred in the rescue of a stranger is compensable if the conditions of employment place the claimant in a position which requires the employee by ordinary standards of humanity to undertake the rescue. In this instance, claimant's job placed him on the roadway where he witnessed the emergency situation. Claimant correctly perceived the man in the roadway to be in imminent danger and proceeded to rescue him from the roadway. It was claimant's employment that placed him in the position where he encountered the emergency roadway situation and his humanitarian efforts to alleviate the danger is accordingly considered incidental to his employment.[7]

Respondent argues the fact the claimant in *Rains* possessed a DOT licence that required him to render aid makes *Rains* distinguishable from this case. The undersigned disagrees. The legal analysis of the Good Samaritan doctrine in *Rains* does not rely on the claimant's DOT licensing as a factor. The focus in *Rains* was the fact the claimant's employment placed him in a position where he encountered the emergency situation.

The Board Member in *Rains* did comment that there was some benefit to the employer, stating the act of rescuing a person who was in the roadway made the road clear, thereby making the roadways safer. In this case, the undersigned finds it significant that claimant is respondent's director of public relations. Ignoring an obviously injured and distressed person is not good public relations. The undersigned agrees with the ALJ that helping a person who has been injured is good public relations and, in this case, good for respondent.

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[7] *Rains* at 4-5 (Citations omitted).

For the purposes of this preliminary hearing appeal and in the absence of an opinion by the full Board, the undersigned accepts *Rains* as precedent. Claimant suffered an injury by accident arising out of and in the course of her employment.

CONCLUSION

Claimant suffered an injury arising out of and in the course of her employment with respondent.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Gary K. Jones dated July 30, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October, 2014.

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HONORABLE SETH G. VALERIUS
BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
joni@jfranklinlaw.com
carla@jfranklinlaw.com

James B. Biggs, Attorney for Respondent and its Insurance Carrier
jbiggs@cavlem.com
gbronson@cavlem.com

Gary K. Jones, Administrative Law Judge